
(1985) 02 GUJ CK 0009
In the Gujarat High Court

Mahendra P. Desai

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 15-02-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 173(8)

Citation : (1985) 2 GLR 1056

Hon'ble Judges : B.S. Kapadia, J

Bench : Single Bench

Judgement

B.S. Kapadia, J.—The present application is directed against the order passed on Exh. 11 in the Criminal Case No. 3285 of 1983 by the learned Judicial Magistrate First Class, Anand on 7th November 1983.

2. The facts in short leading to this revision application are as under:

3. In the aforesaid case the Police has filed the charge sheet and the learned Magistrate has taken cognizance of the case and also framed the charge. The original complainant Mahendra P. Desai made an application purporting to be u/s 173(8) of the Criminal Procedure Code and submitted that the complainant has a doubt that the police has colluded with the accused and/or deliberately or ignorantly the proper investigation has not been done and he pointed out certain defects in the investigation as detailed in the said application. The said application was opposed on behalf of the accused. After considering the contentions raised therein the learned Magistrate has dismissed the said application.

4. Shri H.M. Parikh, the learned Advocate appearing for the petitioner submits that this is totally an erroneous order which results into injustice to the original complainant. He submits that the learned Magistrate has failed on the authority reported in 1976 CLJ 1296 in the case of Jitendranath Ghosh and Anr. v. State which authority has not been followed by this Court in the case reported in 25 GLR 897 in the case of Bachubhai Bhikhabhai v. State. He has further relied on

the judgment of the Supreme Court in the case of Ram Lal Narang Vs. State (Delhi Administration), . While Shri A. J. Patel, the learned Advocate for the original accused and Shri D. K. Trivedi, Addl. P.P. for the State state that they have no objection if the revision application is allowed with a direction to the learned Magistrate that if he finds illegality in the investigation he can direct the Police Officer to reinvestigate the case. In that view of the matter it does not require any detailed discussion on the issue. However, it may be pointed out that in the aforesaid Ram Lal's case the Supreme Court has also referred to the case of H.N. Rishbud and Inder Singh Vs. The State of Delhi, wherein it is observed as under:

It does not follow that the invalidity of the investigation is to be completely ignored by a Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation, as the circumstances of an individual case may call for.

5. It is also observed therein that this decision is a clear authority for the view that further investigation is not altogether ruled out merely because cognizance of the case has been taken by the Court; defective investigation coming to light during the course of a trial may be cured, by a further investigation, if circumstances permit.

6. In view of the Supreme Court judgment it is clear that the view taken by the learned Magistrate is totally an erroneous view that he cannot direct further investigation after cognizance is taken. It may further be pointed out that the aforesaid case of Jitendra Nath Ghosh and Ors. was also pointed out in the case of Bachubhai Bhikhahhai reported in 25 GLR 897 wherein in para 6 it is observed as under:

...If there is an authority which is competent to make additional report or reports there does not appear to be any reason why the court should not have power to direct the authority to make further report.

In para 8 of the said judgment it is observed that it is not possible to agree with the view taken by the Calcutta High Court."

Thus, the order passed by the learned Magistrate on Exh. 11 is erroneous and illegal and hence it is set aside. The revision application stands allowed. Interim stay vacated. The learned Magistrate is directed to consider the application on merits and if he finds that there is illegality in investigation as observed by the Supreme Court in the aforesaid judgment he will have power to direct further investigation. Rule made absolute.